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Collective Bargaining—Some Fundamental Considerations

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IN the backwash of the World War "collective bargaining" has loomed up as one of the controversial industrial questions of importance. It was the issue on which the President's First Industrial Conference in October, 1919, was disrupted. The President's Second Industrial Conference, in its final report of March 6, 1920, stated that collective bargaining and the obligation to carry out the collective bargain when made, were two of the most highly controversial questions which came before it.

Confusion in the Discussion of Collective Bargaining

Anyone making a study of this question is at once impressed by two striking facts; namely, the confusion in the discussion, and the fact that collective bargaining is not a new issue. Much has been said and written, but there has been little of clear or fundamental thinking on this subject. In the heat of the argument, polemics have taken precedence over dispassionate reasoning. The controversy is further confused by the different senses in which the term "collective bargaining" is used and the varying mental reservations entertained by those arguing the subject.

Trade unionists insist that the only true method of collective bargaining is that under which the employees are organized in trade unions, and where conditions of work are fixed jointly between the employer and trade union delegates. This is the narrow interpretation of the term which implies the closed union shop and the recognition by the employer of the trade union as the exclusive representative of the employees. Opposed to this narrow limitation is the broader construction which includes any process of collective action between an employer and his employees, in which the latter are represented by representatives duly chosen by the employees without necessary reference to trade unions or other outside organizations. This construction does not limit the type of shop organization, although it usually implies the shop in which employment is not conditioned upon membership or non-membership in a trade union. It implies also that the employer may deal with his own employees as a whole or through a committee chosen by and from among themselves, or with duly chosen employee representatives from outside the industrial establishment.

The second striking fact in the discussion is that collective bargaining as a matter of group dealing, in spite of its sudden prominence as an issue, is not new; only the name now applied to it is of relatively recent date. The term was perhaps first used in 1891 by Mrs. Sidney Webb, wife of the well-known English economist, a collaborator with him in several works on trade unionism. The Industrial Commission, created by an Act of Congress in 1898, stated in its report of 1901: "Whether the phrase 'collective bargaining' will ever become established in common use in the United

States is perhaps doubtful. It is, however, clearly desirable that the nature of the practice which it represents should be clearly understood." (Vol. XVII, chapter 2, page LXXVII.) The term has come into common use but unfortunately with an equivocal meaning.

Prior to the World War little was heard of collective bargaining. Interest in the subject was largely academic; but the incorporation in 1918 of a statement on collective bargaining by the National War Labor Board in its set of governing principles and policies undoubtedly did much to bring the subject to the forefront.

While the use of the term and the issue itself appear to be so recent in origin, the act of negotiation by an employer or a group of employers, upon one side, and a group of employees, on the other, which is the essential of any method of collective dealing, is considerably older. As early as 1795, a trade agreement was entered into by the employers and workmen in the printers' trade in New York City; and, while viewed in the light of today, this agreement was undoubtedly crude, it proves that the process of collective dealing in industry did exist even in the early days of the republic.

Moreover, whenever in the history of industrial operation the employer at any time desired to secure the judgment of his workmen on matters of shop practice or of other mutual concern, he called the workers together or, if they were too numerous, asked them to select a committee in order that he might consider with them matters of common interest. Where, for instance, unemployment threatened, employer and employees would in this manner jointly consider the best policy in respect to lay-offs, discharges, or the distribution of employment. Similarly, they might discuss and agree upon questions of hours of work, employment and training of apprentices, safety and sanitation, working on holidays, or arranging a shop picnic. The process of dealing between an employer and all of his employees jointly, or groups or committees of the employees, is in effect collective bargaining and, in a broad sense, is not necessarily dependent upon a fixed formula of negotiation or a special type of organization.

FUNDAMENTAL CRITERIONS OF COLLECTIVE BARGAINING

Collective bargaining means adjustment of industrial relations between employer and employed through group negotiation. Individual bargaining refers to the expressed or implied agreement between a single employer and a single employee, and the terms of the agreement apply only to him. The individual employee determines for himself the conditions under which he will work and this is made the basis of his dealing with his employer. In contrast, under collective bargaining a single employer may meet with many employees, or many employers may meet with many employees, or their representatives may meet, and the agreement made may apply to a single establishment, to a department therein, to a trade, or even to a whole industry.

Group Action.—As already stated, a fundamental criterion of collective bargaining is group action. The group may consist of all employees in an establishment, or it may be a committee representing the employees of an establishment or of a group of establishments. In any event, in order to effect a collective bargain, some degree of association must prevail among the employees. It may be formal or informal, permanent or temporary. It may be a trade union or it may be a shop committee, a works council, or

some other form of voluntary association. The final report of the President's Second Industrial Conference says on this point: "There are two types of 'collective bargaining' as thus defined; one in which the employees act as a group through the trade or labor union; the other in which they act as a group through some other plan of employee representation." (page 30)

Responsibility on the Part of Both Parties.—An equally important fundamental consideration in collective bargaining is responsibility on the part of both parties to the bargain. This responsibility must attach not only to the principles in the bargain, whether they be individuals or groups, but must clearly attach also to those who represent them as agents. There must not be any exercise of power without corresponding legal as well as moral responsibility. Lack of responsibility on the part of trade unions for their own acts and those of their agents is one of the reasons for refusal by employers to enter voluntarily into trade agreements with trade unions and to recognize them as the spokesmen of their employees.

It is, therefore, essential in collective bargaining, first, that there should be negotiation with a group of employees if it cannot be had with all employees simultaneously; second, that the employees should be brought together, temporarily or permanently, in some form of association, although such association need not be a trade union; and, third, that the groups must be legally responsible for their own acts and those of their representatives.

The means by which these representatives are chosen and the character of the representatives are important considerations. It is obvious, however, that when the contracting parties and their representatives on both sides bear to each other the simple relationship of employer and employee, this relationship, involving as it does daily contact and continuous common work interest, can best be controlled and fostered by the ordinary and traditional rules of business.

EMPLOYERS AND ORGANIZED LABOR'S ATTITUDE ON COLLECTIVE BARGAINING

As already stated, collective bargaining between an employer and his employees has existed in some form or other since the early days of modern factory organization. It is not now opposed by employers generally. The principle of collective bargaining, however, is not the matter in controversy. It was readily agreed to by the National War Labor Board, and it was not questioned in the President's First Industrial Conference. In its letter to President Wilson at the termination of that Conference, the Public Group said:

> We deem it important to emphasize the fact that the Conference did not at any time reject the principle of the right of the workers to organize and to bargain collectively with their employers. Neither the Conference as a whole, nor any group in the Conference, opposed the right. The difficulty that arose and the issue upon which the Conference failed to agree, was not upon the principle involved but upon the method of making it effective.

It is the special interpretation and the method for making collective bargaining effective that strikes at the heart of the controversy.

For light on these questions the President's First Industrial Conference furnishes a fruitful field of information. The labor group interpreted the right of collective bargaining by wage earners as an obligation upon the employer to deal for this purpose exclusively with a trade or labor union. The employers' group insisted that any lawful form of organization, including the shop committee or works council,

should be recognized as the medium through which the employer might deal collectively with his employees. It is clear, therefore, that the labor unions, for whom the labor group acted as spokesman, intend to use collective bargaining as a means of forcing complete unionization on the industries of the United States. They want to coerce the employers into dealing with organized labor and for that purpose seek to establish and enforce the maintenance of the closed union shop with its restrictions on freedom of employment and on productive output.

Such coercion the employers naturally and rightfully resent. They equally insist that the employees be free to decide for themselves the kind of association they wish to form for their representative negotiation. Further evidence of organized labor's position on the issue of collective bargaining is found in the statement of members of the labor group, who, as reported by the chairman of the general committee of the Conference, insisted that the resolution for recognition of the right of wage earners to bargain collectively be so worded as to mean that it "inhibited and prohibited the idea that any other body (than) a trade or labor union could be meant by the resolution, that it was an invitation going out from this conference to wage earners to join no other organization except a trade or labor union."

The same view is expressed in the resolution adopted by the American Federation of Labor at its annual convention in Atlantic City, June 9 to 23, 1919, which reads as follows:

> Whereas many steel corporations and other industrial institutions have instituted in their plants systems of collective bargaining akin to the Rockefeller Plan. . . . Resolved, that we disapprove and condemn all such company unions and advise our membership to have nothing to do with them; and be it further resolved, that we demand the right to bargain collectively through the only kind of organization fitted for this purpose, the trade union, and that we stand loyally together until this right is conceded us.

Employee Representation

Equally clear from the records of the Conference is the difference in position of the employers and of organized labor in respect to the character of employee representation for purposes of collective bargaining. The Labor Group's resolution in the Conference specifically emphasizes the right of wage earners "to be represented by representatives of their own choosing in negotiations and adjustments with employers." In taking this stand the labor group knew that, as a matter of practice, labor union agents would be the employees' representatives whenever at least an aggressive minority of employees in an establishment were members of labor unions. From experience also the employers in the Conference knew likewise; and besides they knew that these representatives would, as a matter of fact, not be chosen *by* the employees but *for* the employees *by* the labor union officials. They might be men from outside the establishment, usually not familiar with the circumstances of the issue and having primary interests other than those of the employees whom they claim to represent. They might, therefore, bring an element of antagonism into the negotiations which would be fatal to good relations between the employer and employees in an establishment.

The Employers' Group, therefore, insisted on adding to the resolution the following clause:

> . . . and the right of the employer to deal or not to deal with men or groups of men who are not his employees and chosen by and from among them is recognized, and no denial is intended of the right of an employer and his workers voluntarily to agree upon the form of their representation relations.

The employers plainly demanded as of vital importance, and so announced in their final statement at the termination of the Conference "that the employers and employees in each individual establishment should exercise every effort to settle between themselves all questions arising in the employment relation without intervention of outsiders. Management and men should regard this as one of their prime privileges and duties." In this attitude employers do not challenge the right of their employees to join labor unions or any lawful organization on their own volition, nor do they take issue with legitimate activities of labor unions, but they believe it to be of vital concern to the mutual interests of the employer and his employees and conducive to the soundest industrial development of the country that individual establishments be considered the place of mutual interest and the medium of collective dealing. On this question the President's Second Industrial Conference unanimously supports the employers' contention when it says in its final report:

> The guiding thought of the Conference has been that the right relationship between employer and employee can be best promoted by the deliberate organization of that relationship. That organization should begin within the plant itself. . . . Industrial problems vary not only with each industry but in each establishment. Therefore, the strategic place to begin battle with misunderstanding is within the industrial plant itself.

Yet with it all, the employers in the first conference did not preclude the presence of men from outside the establishment as employee representatives. "The employer should be free to exercise his judgment as to whether he will meet outsiders as representatives of his employees" is one of the sentences in the final statement of the Employers' Group. The employers repeatedly stated that they would ordinarily welcome as the representative of the employees the priest or minister or some other public person in the locality, if he were fairly chosen by the employees and himself did not prove to be objectionable because of pronouncedly antagonistic preaching or actions. Similarly, they might accept an outside labor union agent, but would not be coerced to accept any such agent unless there existed in a closed union shop an agreement to this effect between the employer and the labor unions.

Moreover, employers readily concede that employees' representatives should be free to exercise the privilege of conferring outside the conference room with anybody they may choose—labor leader, lawyer or layman—before assenting to or dissenting from any proposition. Equally, the employers would bring into the negotiations only representatives regularly employed in the establishment in which collective dealing is in process.

The chief argument of organized labor against representation of employees chosen by and only from among themselves is based on the claim that such representatives would not be free to express their convictions, as they would be conscious at all times of the dependency of their positions on the will of their employer. There may be some basis of truth for this statement, but full freedom of the employees' representative in the collective negotiation, without in any way endangering their positions, can and must be safeguarded by proper provision and explicit statement of the employer; and public opinion can and will enforce strict adherence to this vital protection of the workers.

Another main contention of the Labor group in the President's First Industrial Conference in support of their view of wage earners being "rep-

resented by representatives of their own choosing" referred to the analogy between the political democracy enjoyed in the United States and the industrial democracy sought to be established therein. But this analogy is a strong argument against, and not for, organized labor's contention. The citizens entitled to vote in a state or a municipality of the United States, when choosing respectively their governor, mayor, or other public representatives may select men of their own choosing provided these men are bona-fide citizens of the state or municipality, as the case may be. And similarly the representative of them all in external as well as internal negotiations, the President, must be chosen from among the eligible citizens of the United States. The employers' group claimed that this arrangement should, as a matter of right, even if set aside as a matter of voluntary choice, equally apply in industry. The employees of an establishment should, therefore, be free to choose their own representatives, provided the latter are from the eligible list of the citizenship of the establishment or, in other words, are bona-fide employers therein.

COLLECTIVE BARGAINING AND THE SMALL EMPLOYER

There is one other important consideration that must not be overlooked when discussing the issue of collective bargaining. Whereas the industrial establishment with many employees requires, as a practical matter, that there be some method whereby the employees, if need be, can, deal collectively with their employer in respect to wages, hours and conditions of work, individual dealing can be and is a common practice in small establishments. In spite of the great development of industrial organization within the past fifty years, the important industrial factor today is that of the small employer. According to the United States Census of Manufactures of 1914, covering 275,791 manufacturing establishments, only 648 establishments or one-fifth of one per cent employed over 1,000 wage earners each; their aggregate employment embraced somewhat over one and one-quarter million men and women out of over seven million employed in all establishments. Each of 270,687 establishments, or 98.1 per cent of all, employed 250 wage earners or less; and each of 273,795, or 99.2 per cent employed 500 wage earners or less, including in the aggregate almost five million workers.

It may be stated with a fair degree of certainty that the census now under way will not show any marked difference in the general distribution of small, medium-sized and large establishments. While the latter will, no doubt, have increased, they may not number more than 1 per cent of the whole; and it may be safely assumed that at least 90 per cent of all the industrial establishments will still each employ 250 workers or less.

The relatively small establishments, therefore, constitute the backbone of the industrial system in this country, and personal contact and individual dealing between employer and employees should not be a difficult matter in such plants.

While the individual employee in a large establishment may feel that he is unable to bargain on an equality with a powerful employer and, therefore, should seek protection through the process of collective bargaining, it must be admitted that the small employers—the 98 per cent of all—would be at a distinct and unfair disadvantage if they were obliged to bargain collectively with a powerful trade or labor organization.

THE PRACTICAL EFFICIENCY OF COLLECTIVE BARGAINING

Collective dealing in itself is a method or means of negotiation; it is not a panacea for labor difficulties. Its acceptance and use grant no assurance of freedom from industrial disturbances. If the parties dealing collectively are unable to agree, the imminence of a dispute and interruption of industrial operation is great. This is clearly recognized by students of the question. Even Sidney Webb, the champion of trade unionism and of collective bargaining, says that "it is impossible to deny that the perpetual liability to end in a strike or lockout is a great drawback to the matter of collective bargaining. So long as the parties to a bargain are free to agree or not to agree, it is inevitable that human nature being what it is, they should now and again come to a deadlock leading to that trial of strength and endurance which lies behind all bargaining."

The discussion of collective bargaining must come finally to a pragmatic test. In the end the essential question is: How does it work? Theory is not enough, speculation is not sufficient, practice is the ultimate test.

From the foregoing discussion it is clear that there are two general concepts of collective bargaining, one narrowly limited, the other broad in scope. The narrow view of collective bargaining is inseparably bound up with recognition of trade unions and enforcement of the closed union shop. I believe this view is being outgrown in the United States as we are thinking more clearly about collective bargaining.

The broad definition of collective bargaining, which includes any type of collective action on the part of employees, is being more and more generally accepted. The determination of wage rates, of hours and conditions of work, is to be the result of a voluntary agreement between two responsible parties. It is to be not a truce, but a mutually satisfactory arrangement. This is the essence of the new concept of collective bargaining. It is a hopeful sign of progress.